

ORIGINAL

FILED

May 7 2010

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 09-0687

CITY OF KALISPELL,

Plaintiff and Appellee,

v.

HARLEY KERN,

Defendant and Appellant.

Ed Smith
MAY 10 2010
CLERK OF THE SUPREME COURT
STATE OF MONTANA

MOTION TO VOLUNTARILY DISMISS APPEAL

COMES NOW, Defendant and Appellant Harley Kern, by and through his counsel of record, Joslyn Hunt, and moves to voluntarily dismiss his appeal in the above entitled cause.

Appellant makes this motion pursuant to Rule 36, Mont. R. App. P., on the grounds and for the reason that the Appellant does not wish to continue with his appeal. See, Exhibit A, Appellant's Affidavit.

Assistant Attorney General Mark Mattioli has been contacted regarding this motion and does not object.

Respectfully submitted this 7 day of May, 2010.

OFFICE OF THE STATE PUBLIC DEFENDER
Appellate Defender Office
139 N. Last Chance Gulch
P.O. Box 200145
Helena, MT 59620-0145

By: Joslyn Hunt
Joslyn Hunt
Chief Appellate Defender

5-7-10
DATE

By: See Affidavit Attached
Harley Kern
Defendant/Appellant

DATE

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and accurate copy of the foregoing

Motion to Voluntarily Dismiss Appeal to be mailed to:

STEVE BULLOCK
Montana Attorney General
MARK MATTIOLI
Assistant Attorney General
215 North Sanders
P.O. Box 201401
Helena, MT 59620-1401

KRISTI CURTIS
Kalispell City Attorney
P.O. Box 1997
Kalispell, MT 59903

HARLEY KERN
333 College Avenue #14
Kalispell, MT 59901

DATED: 5/7/2010 Shuch H Brader

AFFIDAVIT

STATE OF MONTANA)
 : SS.

County of Flathead)

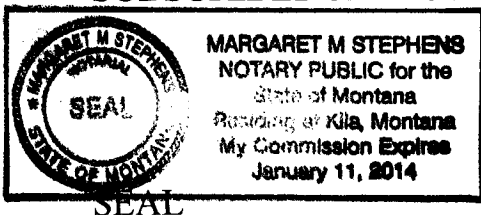
I, Harley Kern, Appellant in the above referenced case, being first duly sworn upon by oath, depose and state as follows:

1. I acknowledge that I have had sufficient communication with my attorney, and am satisfied with the advice she has given me. I have decided to ask for dismissal of my appeal.

Respectfully submitted this 4 day of May, 2010.

Harley Kern
Harley Kern
Appellant/Defendant

SUBSCRIBED AND SWORN to before me this 4th day of May, 2010.



Margaret M. Stephens
Printed Name: Margaret M. Stephens
Notary Public for the State of Montana
Residing at Kila, MT
My commission expires January 11, 2014